IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2529 OF 2005
IN
ELECTION PETITION NO. 17 OF 2004

Shri Shyam Padaji Mhatre ....Petitioner.

V/s

Shri Vivekanand Shankar Patil ....Respondent.

Mr. Tejpal Ingle with Mr. S.V. Gavand for the petitioner.

Mr. C.G. Gavnekar with Deepa Sawant i/b G.S. Hiranandani for the respondent.

CORAM: V.M. KANADE, J.

DATE: 28th March, 2006

P.C.:

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. This notice of motion is taken out by the respondent and the following prayers are made in the Notice of Motion.

> "a) the Petitioner be directed to set forth full particulars of corrupt practice alleged against the Respondent in paragraph III Sub paragraph 17 and ground (g) together with the names of the parties alleged to have committed such corrupt practice and the date and place

of commission of each such practice."

"b) the petitioner be directed to give full particulars of the voters who have voted twice as also the particulars of dead persons who have in whose names votes were allegedly cast as alleged in paragraph 17 and ground (g) of this Petition."

3. The grievance of the respondent is that no particulars of the corrupt practice alleged by the petitioner in the Election Petition have been given. Further, it is stated that source of information regarding the averments made in the said paragraph III Sub-paragraph 17 as also names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice have not been given and, therefore, the petitioner in the Election Petition may be directed to give full particulars. Further, in prayer clause (b) the particulars of the voters who have voted twice by voting in the names of dead persons also have not been stated in the Election Petition.

4. The affidavit in reply is filed to this Notice of Motion by the petitioner herein in which he admitted

that the particulars were not available with the petitioner at the time of filing of the Election Petition and, therefore, those particulars were not furnished. It has been stated in the said affidavit-in-reply that at some places 90% to 98% voting took place in the Constituency and all the votes were given to the Peasant and Workers Party of India and in view of this it is submitted that this fact itself shows that voting did not take place in free and fair manner. In other words, it is admitted in the affidavit in reply that the petitioner in the Election Petition did not have particulars as have been sought or demanded by the respondent in the Notice of Motion. Since the petitioner herein is unable to furnish the particulars, the notice of motion, even if it is made absolute, no useful purpose will be served and, therefore, consequential order will have to be passed in view of the prayer made in prayer clause (d). In prayer clause (d) it is prayed that this Hon'ble Court may pass such other and further orders as this Hon'ble Court deems fit and proper.

5. The law on this point is quite well settled. It is the primary duty of the petitioner in the Election Petition not only to give material facts but also to

set out material particulars in order to constitute a proper cause of action for the purpose of filing the Election Petition. Since these particulars are absent, averments in the said paragraph are liable to be struck down in view of the provisions of Order VI Rule 16 of the Civil Procedure Code. The said paragraph III Sub-paragraph 17 and ground (g), therefore, are struck off from the Election Petition and the notice of motion is made absolute accordingly.

6. Notice of Motion is disposed of in the above terms with no order as to costs.

V.M. KANADE, J.